

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.574 OF 2005

Shri Madhavrao Vithoba Raut .. Appellant
Versus
Smt. M.S.Kadam & Anr. .. Respondents

Smt.Namita Hemrajani for appellant
Mr.M.M.Sathaye for respondent no.1.

CORAM : P.V.KAKADE, J.
DATE : 10TH AUGUST, 2005.

P.C.:

1. This is an appeal preferred by the appellant against the judgment and order passed by Addl. District Judge, Nasik dated 6th September, 2003 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Nasik Road dismissing the plaintiff's suit for specific performance.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiff had filed the suit for declaration that the defendants had no right to sell the suit property and that the plaintiff had right and title created in the suit property under the agreement of sale and for perpetual injunction restraining the defendants from disposing off the suit land by sale or transfer in any manner to a third person or other than the plaintiff. The defendants contested the suit on various grounds, inter alia, submitting that the suit was not maintainable in its present form and that there was no agreement between the parties as alleged by the plaintiff and as such the suit was sought to be dismissed.

. The learned trial judge adjudicated the dispute on merits and on the basis of available evidence on record came to the conclusion that the plaintiff had failed to prove the alleged agreement to sell dated 29.3.1996 and that it was enforceable in law when the suit came to be field and as such the plaintiff's suit for declaration and perpetual injunction was held not

maintainable and came to be dismissed. The appeal was carried to the District Court, Nasik. The learned Addl. District Judge after hearing both the parties came to the conclusion that the findings recorded by the lower court were just legal and proper and therefore, the appeal was dismissed. Hence the present appeal.

4. At the outset it may be noted that there is absolutely no substantial question of law involved in this appeal. The concurrent findings recorded by both the courts below would show that they have rightly held that the so-called suit agreement dated 29.3.1996 was not proved, nor was it in subsistence, and therefore, the relief based on that aspect could not be granted and hence the suit was not maintainable in its present form.

. The learned counsel for the appellant at this stage made submission that the appellant may be allowed to amend the plaint and proceed with the amended plaint afresh. However, in my considered view, such opportunity was available to the appellant not only during the trial but also in the lower appellate court, but he did not avail of the same for the reason best known to himself. I am satisfied that granting of

amendment to the plaint at this stage would cause irreparable loss to the other side, which cannot be allowed in law. In view of this aspect, I have no hesitation to hold that the appeal deserves to be dismissed and stands dismissed with no order as to costs.

. Consequently Civil Application No.489 of 2004 and Civil Application No.490 of 2004 also stands dismissed with no order as to costs.